

103D CONGRESS  
1ST SESSION

# H. R. 377

To amend the Public Health Service Act to establish Federal standards to ensure quality assurance of drug testing programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. SOLOMON introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Education and Labor, and Post Office and Civil Service

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## A BILL

To amend the Public Health Service Act to establish Federal standards to ensure quality assurance of drug testing programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Quality Assurance of  
5 Drug Testing Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) drug abuse in the workplace is a serious na-  
9 tional problem, and

1 (2) drug testing can be an effective deterrent to  
2 drug abuse when administered in a manner that pro-  
3 vides for quality assurance.

4 **SEC. 3. PUBLIC HEALTH SERVICE ACT.**

5 (a) DRUG TESTING.—The Public Health Service Act  
6 is amended—

7 (1) by redesignating title XXVI (42 U.S.C.  
8 300cc et seq.) as title XXVII, and

9 (2) by inserting after title XXV (42 U.S.C.  
10 300bb–1 et seq.) the following new title:

11 **“TITLE XXVI—QUALITY**  
12 **ASSURANCE IN DRUG TESTING**

13 **“SEC. 2601. LABORATORY CERTIFICATION STANDARDS.**

14 “(a) PROHIBITION.—No individual may perform a  
15 toxicological analysis in connection with any drug testing  
16 program that is subject to this title unless such analysis  
17 is conducted in a laboratory certified under subsection (b).

18 “(b) CERTIFICATION.—Not later than 1 year after  
19 the date of enactment of this title, the Secretary shall es-  
20 tablish a program for certifying laboratories that meet  
21 standards for performing—

22 “(1) drug screening tests,

23 “(2) drug confirmatory tests, and

24 “(3) both drug screening and confirmatory  
25 tests.

1       “(c) CRITERIA.—In establishing standards for certifi-  
2 cation under subsection (b), the Secretary shall use cri-  
3 teria that will maximize the predictive value of the testing  
4 scheme and that take into consideration the practices, pro-  
5 cedures, and experience of drug testing programs which  
6 the Secretary determines are conducted in accordance with  
7 appropriate standards and procedures.

8       “(d) PERIODIC REVIEW.—At least once each year,  
9 the Secretary shall review, and where appropriate revise,  
10 the certification criteria established under subsection (b),  
11 taking into consideration the relevant scientific technical  
12 advances in the area of drug testing and revisions needed  
13 to reflect employer zero-drug tolerance practices.

14       **“SEC. 2602. ANTI-DRUG ABUSE POLICY.**

15       “(a) WRITTEN POLICY.—As a condition of imple-  
16 menting or maintaining a drug testing program, an em-  
17 ployer shall establish a written anti-drug abuse policy that  
18 shall contain, at a minimum, an explanation concerning  
19 the—

20               “(1) circumstances under which a drug test will  
21 be administered, the procedures for notifying an em-  
22 ployee of a confirmed positive result, and a state-  
23 ment the policy will be administered in a consistent  
24 and nondiscriminatory manner without regard to

1       whether the employee is employed in a management  
2       or hourly capacity,

3           “(2) safeguards established for protecting the  
4       privacy of individuals who are subject to testing, in-  
5       cluding chain custody procedures and the limitations  
6       on disclosure of the results of drug tests,

7           “(3) availability of any drug abuse treatment  
8       program,

9           “(4) penalties that may be imposed for a viola-  
10      tion of the anti-drug policy of the employer, and

11          “(5) procedures under which an applicant or  
12      employee shall be given a reasonable opportunity to  
13      explain a confirmed positive test result.

14      “(b) NOTICE.—An employer shall make a reasonable  
15      effort to provide notice of the written anti-drug abuse pol-  
16      icy to applicants and employees subject to testing using  
17      whatever methods the employer determines to be appro-  
18      priate.

19      **“SEC. 2603. DRUG-FREE AWARENESS PROGRAM.**

20      “‘In order for an employer to be permitted to imple-  
21      ment or maintain a drug testing program, such employer  
22      shall establish, as part of such drug testing program, a  
23      drug-free awareness program designed to inform its em-  
24      ployees concerning—

1           “(1) the dangers of drug abuse, both inside and  
2       outside of the workplace,

3           “(2) the policy of the employer of maintaining  
4       a drug-free workplace,

5           “(3) information as to the existence and avail-  
6       ability of counseling, employee assistance, rehabilita-  
7       tion, and other drug abuse treatment programs of  
8       which the employer is aware, and

9           “(4) the penalties that may be imposed on ap-  
10      plicants and employees who test positive for the use  
11      of a drug, and for the manufacture, distribution, dis-  
12      pensation, possession, or use of a drug in the work-  
13      place of the employer.

14   **“SEC. 2604. STANDARDS FOR DRUG TESTING.**

15       “(a) APPLICANTS.—Nothing in this title shall be con-  
16      strued to prohibit an employer from requiring, as a condi-  
17      tion of employment, that an applicant submit to and pass  
18      a drug test based on criteria established by the employer  
19      that is designed to achieve a drug-free workplace. Refusal  
20      by an applicant to submit to such a test may be treated  
21      in the same manner as a failure to pass a drug test.

22       “(b) EMPLOYEES.—Nothing in this title shall be con-  
23      strued to prohibit an employer from requiring an employee  
24      to submit to and pass a drug test—

1 “(1) where the employer has reasonable sus-  
2 picion to believe that the employee is using or under  
3 the influence of a drug,

4 “(2) where such test is administered as part of  
5 a scheduled medical examination,

6 “(3) in the case of an accident or incident in-  
7 volving the actual or potential loss of human life, se-  
8 rious bodily injury, or significant property damage,

9 “(4) during and for a reasonable period of time  
10 (not to exceed 5 years) after the completion of a  
11 drug abuse treatment program, or

12 “(5) in the case of sensitive employee positions,  
13 work units, locations, or facilities where drug abuse  
14 has been identified as a problem, on a random basis.

15 “(c) DEFINITION.—As used in this title, the term  
16 ‘random’ means the selection of individuals for testing  
17 based on a nondiscriminatory impartial methods so that  
18 no employee is harassed or treated differently from other  
19 employees in similar circumstances.

20 **“SEC. 2505. EMPLOYEE PROTECTIONS.**

21 “(a) PROHIBITIONS.—In the case of an applicant or  
22 employee, it shall be a violation of this title—

23 “(1) for an employer to fail to make reasonable  
24 efforts to inform the applicant or employee as to the  
25 drug testing policy of the employee,

1           “(2) for an employer to take any adverse action  
2       based on the unconfirmed positive results of a drug  
3       test, except as provided in subsection (c),

4           “(3) for an employer, on the request of an ap-  
5       plicant or employee, to fail to provide such applicant  
6       or employee with a reasonable opportunity to be in-  
7       formed of a confirmed positive drug test result, and

8           “(4) for an employer, on the request of an ap-  
9       plicant or employee, to fail to provide such applicant  
10      or employee with a reasonable opportunity to explain  
11      the results of a confirmed positive test result.

12       “(b) ANTIRETALIATION PROHIBITION.—It shall be a  
13      violation of this title for an employer to take retaliatory  
14      action against an employee because of the exercise by the  
15      employee of any right granted or protected under this title.

16       “(c) EXCEPTION FOR SENSITIVE EMPLOYEES.—  
17      Pending the receipt of the results of a confirmatory drug  
18      test, an employer may transfer or reassign an employee  
19      in a sensitive position to another area or position without  
20      any loss in compensation to such employee if the initial  
21      drug test result is positive. If a confirmatory test of such  
22      employee is negative, such employee shall be entitled to  
23      immediate reinstatement to the position from which such  
24      employee has been transferred or reassigned.

1 **“SEC. 2606. CONFIDENTIALITY.**

2 “(a) IN GENERAL.—An individual, other than the ap-  
3 plicant or employee who is the subject of a drug test, shall  
4 not disclose information obtained as a result of a drug  
5 test, except as provided in subsection (b).

6 “(b) PERMITTED DISCLOSURES.—An employer, or  
7 individual conducting a drug test on behalf of an em-  
8 ployer, may disclose information acquired from a drug test  
9 only to—

10 “(1) the applicant or employee taking such  
11 drug test or any other individual specifically des-  
12 ignated in writing by such applicant or employee  
13 taking such drug test,

14 “(2) the employer, including the designated rep-  
15 resentative of such employer, that requested such  
16 test,

17 “(3) any court, governmental agency, arbitra-  
18 tor, or mediator, in accordance with Federal or  
19 State law, and

20 “(4) appropriate drug abuse treatment provid-  
21 ers.

22 **“SEC. 2607. EMPLOYER PRACTICES.**

23 “(a) SAFE WORKPLACE.—Nothing in this title shall  
24 be construed to prohibit an employer from taking action  
25 necessary to ensure a safe workplace.



1       “(b) DRUG-FREE WORKPLACE.—Nothing in this title  
2 shall be construed to prohibit an employer from taking ac-  
3 tion necessary, up to and including termination, in the  
4 case of applicant or employee—

5           “(1) whose drug test result is confirmed posi-  
6 tive,

7           “(2) who refuses to take a drug test authorized  
8 under this title, or

9           “(3) who tampers with or adulterates a drug  
10 testing specimen.

11       “(c) PARTICIPATION IN DRUG ABUSE TREATMENT  
12 PROGRAM.—Nothing in this title shall be construed to  
13 prohibit an employer from requiring an employee to par-  
14 ticipate in, and satisfactorily complete, a drug treatment  
15 program as a condition of continued employment where  
16 the employee has tested confirmed positive for drugs, has  
17 refused to submit to a drug test, or has tampered with  
18 or adulterated a drug test specimen.

19       “(d) SENSITIVE POSITION.—Nothing in this title  
20 shall be construed to prohibit an employer from refusing  
21 to place an employee in, or reinstate such employee, to  
22 a sensitive position if such employee has tested confirmed  
23 positive for drug use.

1 **“SEC. 2608. DRUG ABUSE TREATMENT PROGRAMS.**

2 “As part of the drug-free awareness program estab-  
3 lished pursuant to section 2603, employers shall provide  
4 information to employees concerning the existence and  
5 availability of public and private drug counseling, em-  
6 ployee assistance, rehabilitation, and other drug abuse  
7 treatment programs of which the employer is aware.

8 **“SEC. 2609. REGULATIONS.**

9 “Not later than 1 year after the date of enactment  
10 of this title, the Secretary shall—

11 “(1) establish a program for the certification of  
12 laboratories for the performance of toxicological uri-  
13 nalysis conducted for drug testing programs as de-  
14 scribed in this title, and

15 “(2) issue such other rules and regulations as  
16 may be necessary or appropriate to carry out this  
17 title.

18 **“SEC. 2610. ENFORCEMENT AND RELIEF.**

19 “(a) LABORATORY CERTIFICATION STANDARDS.—  
20 The certification program established pursuant to section  
21 2601(b) shall be enforced in accordance with the proce-  
22 dures and sanctions contained in subsections (g), (h), (i),  
23 (j), (k), and (l) of section 353.

24 “(b) EMPLOYEE COMPLAINTS CHARGING UNLAWFUL  
25 DISCHARGE OR DISCRIMINATION, INVESTIGATION ORDER.

1           “(1) COMPLAINT.—An employee who believes  
2           that such employee has been charged or otherwise  
3           discriminated against by an employer in violation of  
4           this title may, not later than 30 days after such ac-  
5           tion occurs, file (or have any individual file on behalf  
6           of such employee) a complaint with the Secretary of  
7           Labor (hereinafter referred to in this subsection as  
8           the ‘Secretary’) alleging that such discharge or dis-  
9           crimination violates this title. On receipt of such  
10          complaint, the Secretary shall notify the individual  
11          named in the complaint of such filing.

12          “(2) INVESTIGATION AND ORDER.—

13               “(A) INVESTIGATION.—On receipt of a  
14               complaint filed under paragraph (1), the Sec-  
15               retary shall conduct an investigation of the vio-  
16               lation alleged in such complaint. Not later than  
17               30 days after the receipt of such complaint, the  
18               Secretary shall complete such investigation and  
19               shall notify in writing the employer (and any in-  
20               dividual acting on behalf of the employer) as to  
21               the results of such investigation.

22               “(B) ORDER.—Not later than 30 days  
23               after the completion of such investigation, the  
24               Secretary shall, unless the proceeding on the  
25               complaint is terminated by the Secretary on the

1 basis of a settlement entered into by the Sec-  
2 retary and the employer alleged to have com-  
3 mitted such violation, issue an order either pro-  
4 viding the relief prescribed in this section or de-  
5 nying the complaint. An order of the Secretary  
6 issued under this subparagraph shall be made  
7 on the record after notice and opportunity for  
8 public hearing.

9 “(3) RELIEF.—If, in response to a complaint  
10 filed under paragraph (1), the Secretary determines  
11 that a violation of this title has occurred, the Sec-  
12 retary shall order the employer who committed such  
13 violation to provide such suitable relief as the Sec-  
14 retary determines appropriate, including reinstate-  
15 ment, promotion, and the payment of lost wages and  
16 benefits.

17 “(4) REVIEW OR ORDER.—An employee or em-  
18 ployer adversely affected or aggrieved by an order is-  
19 sued under paragraph (2) may obtain review of such  
20 order in the United States Court of Appeals for the  
21 circuit in which the violation, with respect to which  
22 the order was issued, allegedly occurred. The peti-  
23 tion for review shall be filed not later than 60 days  
24 after the issuance of the order of the Secretary  
25 under paragraph (2). Review by the Court of Ap-

1       peals shall conform to chapter 7 of Title 5, United  
2       States Code.

3           “(5) FAILURE TO COMPLY.—If an employee or  
4       employer fails to comply with an order issued under  
5       paragraph (2), the Secretary may file a civil action  
6       in the United States court for the district in which  
7       the violation was found to occur to enforce such  
8       order. Such court, in issuing any final order under  
9       this subsection, may award the costs of litigation  
10      (including reasonable attorney and expert witness  
11      fees) to the prevailing party.

12       “(c) AFFIRMATIVE DEFENSE.—The good faith com-  
13      pliance of an employer with the standards and procedures  
14      established under this title shall constitute an affirmative  
15      defense against any complaint filed under subsection (b).

16       “(d) CONSTRUCTION.—Nothing in this title shall be  
17      construed to require an employer to establish a drug test-  
18      ing program for applicants or employees or make employ-  
19      ment decisions based on such test results.

20      **“SEC. 2611. EFFECT ON OTHER LAWS.**

21       “(a) STATE LAW, SUPERSEDURE.—This title shall  
22      preempt any State or local law, rule, regulation, order or  
23      standard that applies to the drug testing of an applicant  
24      or employee, or that relates to any matter addressed under  
25      this title. No State or local government shall adopt or en-

1 force any law, rule, regulation, ordinance, standard or  
2 order relating to—

3 “(1) the certification of laboratories that per-  
4 form drug testing analysis with respect to such anal-  
5 ysis,

6 “(2) requirements for the conduct of drug test-  
7 ing under the certification program established  
8 under this title,

9 “(3) the conducting of employee or applicant  
10 drug testing programs, or

11 “(4) any other matter relating to this title.

12 “(b) OTHER FEDERAL LAWS.—Nothing in this title  
13 shall be construed to prohibit the Secretary of Transpor-  
14 tation or the Nuclear Regulatory Commission from issuing  
15 regulations with respect to drug and alcohol testing.

16 **“SEC. 2612. EFFECTIVE DATE.**

17 “This title shall become effective 2 years after the  
18 date of enactment of this title, except that the prohibition  
19 contained in section 2601(a) shall not take effect less than  
20 1 year after establishment of the certification program re-  
21 quired under section 2601(b).

22 **“SEC. 2613. DEFINITIONS.**

23 “As used in this title:

24 “(1) APPLICANT.—The term ‘applicant’ means  
25 any individual who has submitted an application to

1 an employer, whether written or oral, for employ-  
2 ment with such employer.

3 “(2) DRUG.—The term ‘drug’ means any con-  
4 trolled substance listed in Scheduled I through V of  
5 section 202 of the Controlled Substances Act (21  
6 U.S.C. 812), alcohol, steroids, and any other drug or  
7 medication that can interfere with employment per-  
8 formance.

9 “(3) DRUG ABUSE TREATMENT PROGRAM.—  
10 The term ‘drug abuse treatment program’ means a  
11 program, such as an employee assistance program,  
12 designed to assist an individual in dealing with prob-  
13 lems caused by drug abuse.

14 “(4) DRUG TEST.—The term ‘drug test’ means  
15 any test procedure used to take and analyze blood,  
16 breath, hair, urine or other body fluids or materials  
17 for the purpose of detecting the presence or absence  
18 of a drug or its metabolites.

19 “(5) EMPLOYEE.—The term ‘employee’ means  
20 an individual employed by an employer.

21 “(f) EMPLOYER.—The term ‘employer’ means an in-  
22 dividual, partnership, corporation, association, or other  
23 entity (including the Federal Government), that employs  
24 one or more employees, and that is engaged in an industry  
25 affecting commerce.

1       “(g) SENSITIVE EMPLOYEE.—The term ‘sensitive  
2 employee’ means an individual employed in a position  
3 whose duties, as defined by the employer, involve respon-  
4 sibilities affecting such matters as national security,  
5 health, or safety, environment, or other responsibilities re-  
6 quiring a high degree of trust and confidence.

7       **“SEC. 2614. PROFESSIONAL ATHLETES.**

8       “For purposes of this title, professional athletes may  
9 be treated in the same manner as employees who meet  
10 the definition of section 2614(g), except that professional  
11 athletes shall not be covered by section 2606(a).”.

12       (b) CONFORMING AMENDMENTS.—

13               (1) Sections 2601 through 2614 of the Public  
14 Health Service Act (42 U.S.C. 300cc through  
15 300cc–15) are redesignated as sections 2701  
16 through 2714, respectively.

17               (2)(A) Sections 465(f) and 497 of such Act (42  
18 U.S.C. 286(f) and 289(f)) are each amended by  
19 striking out “2601” and inserting “2701”.

20               (B) Section 305(i) of such Act (42 U.S.C.  
21 242c(i)) is amended by striking out “2611” each  
22 place it appears and inserting “2711”.

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